

PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

OFFICE OF CHILDREN AND ADULT LICENSING



STATE OF MICHIGAN
Department of Human Services

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Act 368 of 1978

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PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

ARTICLE 17 FACILITIES AND AGENCIES

PART 201 GENERAL PROVISIONS

333.20101 Meanings of words and phrases; principles of construction.

(1) The words and phrases defined in sections 20102 to 20109 apply to all parts in this article except part 222 and have the meanings ascribed to them in those sections.

(2) In addition, article 1 contains general definitions and principles of construction applicable to all articles in this code.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1988, Act 332, Eff. Oct. 1, 1988.

333.20102 Definitions; A.

(1) “Advisory commission” means the health facilities and agencies advisory commission created in section 20121.

(2) “Aircraft transport operation” means that term as defined in section 20902.

(3) “Ambulance operation” means that term as defined in section 20902.

(4) “Attending physician” means the physician selected by, or assigned to, the patient and who has primary responsibility for the treatment and care of the patient.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979 ;—Am. 1981, Act 79, Imd. Eff. June 30, 1981 ;—Am. 1990, Act 179, Imd. Eff. July 2, 1990.

333.20104 Definitions; C to F.

(1) “Certification” means the issuance of a document by the department to a health facility or agency attesting to the fact that the facility or agency meets both of the following:

(a) It complies with applicable statutory and regulatory requirements and standards.

(b) It is eligible to participate as a provider of care and services in a specific federal or state health program.

(2) “Clinical laboratory” means a facility patronized by, or at the direction of, a physician, health officer, or other person authorized by law to obtain information for the diagnosis, prevention, or treatment of disease or the assessment of a medical condition by the microbiological, serological, histological, hematological, immunohematological, biophysical, cytological, pathological, or biochemical examination of materials derived from the human body, except as provided in section 20507.

(3) “Consumer” means a person who is not a provider of health care as defined in section 1531(3) of title 15 of the public health service act, 42 U.S.C. 300n.

(4) “County medical care facility” means a nursing care facility, other than a hospital long-term care unit, which provides organized nursing care and medical treatment to 7 or more unrelated individuals who are suffering or recovering from illness, injury, or infirmity and which is owned by a county or counties.

(5) “Freestanding surgical outpatient facility” means a facility, other than the office of a physician, dentist, podiatrist, or other private practice office, offering a surgical procedure and related care that in the opinion of the attending physician can be safely performed without requiring overnight inpatient hospital care. It does not include a surgical outpatient facility owned by and operated as part of a hospital.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979.

333.20106 Definitions; H.

(1) “Health facility or agency”, except as provided in section 20115, means:

(a) An ambulance operation, aircraft transport operation, nontransport prehospital life support operation, or medical first response service.

(b) A clinical laboratory.

(c) A county medical care facility.

- (d) A freestanding surgical outpatient facility.
- (e) A health maintenance organization.
- (f) A home for the aged.
- (g) A hospital.
- (h) A nursing home.
- (i) A hospice.
- (j) A hospice residence.
- (k) A facility or agency listed in subdivisions (a) to (h) located in a university, college, or other educational institution.
- (2) "Health maintenance organization" means that term as defined in section 3501 of the insurance code of 1956, 1956 PA 218, MCL 500.3501.
- (3) "Home for the aged" means a supervised personal care facility, other than a hotel, adult foster care facility, hospital, nursing home, or county medical care facility that provides room, board, and supervised personal care to 21 or more unrelated, nontransient, individuals 60 years of age or older. Home for the aged includes a supervised personal care facility for 20 or fewer individuals 60 years of age or older if the facility is operated in conjunction with and as a distinct part of a licensed nursing home.
- (4) "Hospice" means a health care program that provides a coordinated set of services rendered at home or in outpatient or institutional settings for individuals suffering from a disease or condition with a terminal prognosis.
- (5) "Hospital" means a facility offering inpatient, overnight care, and services for observation, diagnosis, and active treatment of an individual with a medical, surgical, obstetric, chronic, or rehabilitative condition requiring the daily direction or supervision of a physician. Hospital does not include a mental health hospital licensed or operated by the department of community health or a hospital operated by the department of corrections.
- (6) "Hospital long-term care unit" means a nursing care facility, owned and operated by and as part of a hospital, providing organized nursing care and medical treatment to 7 or more unrelated individuals suffering or recovering from illness, injury, or infirmity.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1980, Act 293, Eff. Mar. 31, 1981 ;—Am. 1981, Act 79, Imd. Eff. June 30, 1981 ;—Am. 1982, Act 354, Imd. Eff. Dec. 21, 1982 ;—Am. 1984, Act 311, Eff. Mar. 29, 1985 ;—Am. 1990, Act 179, Imd. Eff. July 2, 1990 ;—Am. 1996, Act 267, Imd. Eff. June 12, 1996 ;—Am. 2000, Act 253, Imd. Eff. June 29, 2000.

333.20108 Definitions; I to N.

- (1) "Intermediate care facility" means a hospital long-term care unit, nursing home, county medical care facility, or other nursing care facility, or distinct part thereof, certified by the department to provide intermediate care or basic care that is less than skilled nursing care but more than room and board.
- (2) "License" means an authorization, annual or as otherwise specified, granted by the department and evidenced by a certificate of licensure or permit granting permission to a person to establish or maintain and operate, or both, a health facility or agency. For purposes of part 209, "license" includes a license issued to an individual under that part.
- (3) "Licensee" means the holder of a license or permit to establish or maintain and operate, or both, a health facility or agency. For purposes of part 209, "licensee" includes an individual licensed under that part.
- (4) "Limited license" means a provisional license or temporary permit or a license otherwise limited as prescribed by the department.
- (5) "Medically contraindicated" means, with reference to nursing homes only, having a substantial adverse effect on the patient's physical health, as determined by the attending physician, which effect is explicitly stated in writing with the reasons therefor in the patient's medical record.
- (6) "Medical first response service" means that term as defined in section 20906.
- (7) "Nontransport prehospital life support operation" means that term as defined in section 20908.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979 ;—Am. 1986, Act 78, Imd. Eff. Apr. 7, 1986 ;—Am. 1990, Act 179, Imd. Eff. July 2, 1990.

333.20109 Definitions; N to S.

(1) "Nursing home" means a nursing care facility, including a county medical care facility, that provides organized nursing care and medical treatment to 7 or more unrelated individuals suffering or recovering from illness, injury, or infirmity. Nursing home does not include a unit in a state correctional facility.

Nursing home does not include 1 or more of the following:

(a) A hospital.

(b) A veterans facility created under Act No. 152 of the Public Acts of 1885, being sections 36.1 to 36.12 of the Michigan Compiled Laws.

(c) A hospice residence that is licensed under this article.

(d) A hospice that is certified under 42 C.F.R. 418.100.

(2) "Person" means a person as defined in section 1106 or a governmental entity.

(3) "Public member" means a member of the general public who is not a provider; who does not have an ownership interest in or contractual relationship with a nursing home other than a patient contract; who does not have a contractual relationship with a person who does substantial business with a nursing home; and who is not the spouse, parent, sibling, or child of an individual who has an ownership interest in or contractual relationship with a nursing home, other than a patient contract.

(4) "Skilled nursing facility" means a hospital long-term care unit, nursing home, county medical care facility, or other nursing care facility, or a distinct part thereof, certified by the department to provide skilled nursing care.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979 ;—Am. 1991, Act 39, Imd. Eff. June 11, 1991 ;—Am. 1996, Act 224, Eff. June 12, 1996.

333.20115 Rules defining or differentiating health facility or agency; republication of certain rules; waiver or modification; "abortion" defined.

(1) The department may promulgate rules to further define the term "health facility or agency" and the definition of a health facility or agency listed in section 20106 as required to implement this article.

The department may define a specific organization as a health facility or agency for the sole purpose of certification authorized under this article. For purpose of certification only, an organization defined in section 20106(5), 20108(1), or 20109(4) is considered a health facility or agency. The term "health facility or agency" does not mean a visiting nurse service or home aide service conducted by and for the adherents of a church or religious denomination for the purpose of providing service for those who depend upon spiritual means through prayer alone for healing.

NOTE: 333.20115 (2) – (5) applies to surgical outpatient facilities.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;— Am. 1999, Act 206, Eff. Mar. 10, 2000.

333.20131 Comprehensive system of licensure and certification; establishment; purpose; certification of health facility or agency; coordination, cooperation, and agreements; public disclosure.

(1) The department shall establish a comprehensive system of licensure and certification for health facilities or agencies in accordance with this article to:

(a) Protect the health, safety, and welfare of individuals receiving care and services in or from a health facility or agency.

(b) Assure the medical accountability for reimbursed care provided by a certified health facility or agency participating in a federal or state health program.

(2) The department may certify a health facility or agency, or part thereof, defined in section 20106 or under section 20115 when certification is required by state or federal law, rule, or regulation.

(3) The department shall coordinate all functions in state government affecting health facilities and agencies licensed under this article and cooperate with other state agencies which establish standards or requirements for health facilities and agencies to assure necessary, equitable, and consistent state supervision of licensees without unnecessary duplication of survey, evaluation, and consultation services

or complaint investigations. The department may enter into agreements with other state agencies necessary to accomplish this purpose.

(4) The department shall utilize public disclosure to improve the effectiveness of licensure.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.20132 Regulation of medical or surgical treatment prohibited; control of communicable diseases; protection of individuals receiving care and services; standards for inpatient food service establishment; compliance.

(1) The department shall not regulate the medical or surgical treatment provided to an individual by his or her attending physician in a health facility or agency.

(2) This article does not affect the authority of the department to control communicable diseases or to take immediate action necessary to protect the public health, safety, and welfare of individuals receiving care and services in or from a health facility or agency.

(3) A license for a health facility or agency shall include the operation of an inpatient food service establishment within the facility or agency. Standards for an inpatient food service establishment shall be the same as those established under part 129. A health facility or agency issued a license under this article is considered in compliance with that part.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.20141 Health facility or agency; license required; eligibility to participate in federal or state health program; personnel; services; and equipment; evidence of compliance; providing data and statistics.

(1) A person shall not establish or maintain and operate a health facility or agency without holding a license from the department.

(2) A health facility or agency is not eligible to participate in a federal or state health program requiring certification without current certification from the department.

(3) A health facility or agency shall have the physician, professional nursing, health professional, technical and supportive personnel, and the technical, diagnostic, and treatment services and equipment necessary to assure the safe performance of the health care undertaken by or in the facility or agency.

(4) Licensure and certification of a health facility or agency shall be evidence of the fact that the facility or agency complies with applicable statutory and regulatory requirements and standards at the time of issuance.

(5) A health facility or agency shall provide the department with the data and statistics required to enable the department to carry out functions required by federal and state law, including rules and regulations.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.20142 Application for licensure and certification; form; certifying accuracy of information; disclosures, reports; and notices; violation; penalty; false statement as felony.

(1) A health facility or agency shall apply for licensure or certification on a form authorized and provided by the department. The application shall include attachments, additional data, and information required by the department.

(2) An applicant shall certify the accuracy of information supplied in the application and supplemental statements.

(3) An applicant or a licensee under part 213 or 217 shall disclose the names, addresses, principal occupations, and official positions of all persons who have an ownership interest in the health facility or agency. If the health facility or agency is located on or in leased real estate, the applicant or licensee shall disclose the name of the lessor and any direct or indirect interest the applicant or licensee has in the lease other than as lessee. A change in ownership shall be reported to the director not less than 15 days before the change occurs, except that a person purchasing stock of a company registered pursuant to the securities exchange act of 1934, 15 U.S.C. 78a to 78kk, is exempt from disclosing ownership in the facility. A person required to file a beneficial ownership report pursuant to section 16(a) of the securities exchange act of 1934, 15 U.S.C. 78p shall file with the department information relating to securities ownership required by the department rule or order. An applicant or licensee proposing a sale of a nursing home to another person shall provide the department with written, advance notice of

the proposed sale. The applicant or licensee and the other parties to the sale shall arrange to meet with specified department representatives and shall obtain before the sale a determination of the items of noncompliance with applicable law and rules which shall be corrected. The department shall notify the respective parties of the items of noncompliance prior to the change of ownership and shall indicate that the items of noncompliance must be corrected as a condition of issuance of a license to the new owner. The department may accept reports filed with the securities and exchange commission relating to the filings. A person who violates this subsection is guilty of a misdemeanor, punishable by a fine of not more than \$1,000.00 for each violation.

(4) An applicant or licensee under part 217 shall disclose the names and business addresses of suppliers who furnish goods or services to an individual nursing home or a group of nursing homes under common ownership, the aggregate charges for which exceed \$5,000.00 in a 12-month period which includes a month in a nursing home's current fiscal year. An applicant or licensee shall disclose the names, addresses, principal occupations, and official positions of all persons who have an ownership interest in a business which furnishes goods or services to an individual nursing home or to a group of nursing homes under common ownership, if both of the following apply:

(a) The person, or the person's spouse, parent, sibling, or child has an ownership interest in the nursing home purchasing the goods or services.

(b) The aggregate charges for the goods or services purchased exceeds \$5,000.00 in a 12-month period which includes a month in the nursing home's current fiscal year.

(5) An applicant or licensee who makes a false statement in an application or statement required by the department pursuant to this article is guilty of a felony, punishable by imprisonment for not more than 4 years, or a fine of not more than \$30,000.00, or both.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979.

333.20143 Compliance as condition to issuance of license, certificate, or certificate of need.

(1) A license or certificate under this part shall not be issued unless the applicant is in compliance with part 222.

(2) A licensee who is issued a certificate of need under part 222 shall comply with part 222 and all of the terms, conditions, and stipulations of the certificate of need.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1988, Act 332, Eff. Oct. 1, 1988.

333.20144 Licensing on basis of approved building program.

A health facility or agency not meeting statutory and regulatory requirements for its physical plant and equipment may be licensed by the department on the basis of a building program approved by the department which:

(a) Sets forth a plan and timetable for correction of physical plant or equipment deficiencies and items of noncompliance.

(b) Includes documented evidence of the availability and commitment of money for carrying out the approved building program.

(c) Includes other documentation the department reasonably requires to assure compliance with the plan and timetable.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.20145 Construction permit; certificate of need as condition of issuance; rules; information required for project not requiring certificate of need; review and approval of architectural plans and narrative; rules; waiver; fee; "capital expenditure" defined.

(1) Before contracting for and initiating a construction project involving new construction, additions, modernizations, or conversions of a health facility or agency with a capital expenditure of \$1,000,000.00 or more, a person shall obtain a construction permit from the department. The department shall not issue the permit under this subsection unless the applicant holds a valid certificate of need if a certificate of need is required for the project pursuant to part 222.

(2) To protect the public health, safety, and welfare, the department may promulgate rules to require construction permits for projects other than those described in subsection (1) and the submission of plans for other construction projects to expand or change service areas and services provided.

(3) If a construction project requires a construction permit under subsection (1) or (2), but does not require a certificate of need under part 222, the department shall require the applicant to submit information considered necessary by the department to assure that the capital expenditure for the project is not a covered capital expenditure as defined in section 22203(9).

(4) If a construction project requires a construction permit under subsection (1), but does not require a certificate of need under part 222, the department shall require the applicant to submit information on a 1-page sheet, along with the application for a construction permit, consisting of all of the following:

(a) A short description of the reason for the project and the funding source.

(b) A contact person for further information, including address and phone number.

(c) The estimated resulting increase or decrease in annual operating costs.

(d) The current governing board membership of the applicant.

(e) The entity, if any, that owns the applicant.

(5) The information filed under subsection (4) shall be made publicly available by the department by the same methods used to make information about certificate of need applications publicly available.

(6) The review and approval of architectural plans and narrative shall require that the proposed construction project is designed and constructed in accord with applicable statutory and other regulatory requirements. In performing a construction permit review for a health facility or agency under this section, the department shall, at a minimum, apply the standards contained in the document entitled "Minimum Design Standards for Health Care Facilities in Michigan" published by the department and dated March 1998. The standards are incorporated by reference for purposes of this subsection. The department may promulgate rules that are more stringent than the standards if necessary to protect the public health, safety, and welfare.

(7) The department shall promulgate rules to further prescribe the scope of construction projects and other alterations subject to review under this section.

(8) The department may waive the applicability of this section to a construction project or alteration if the waiver will not affect the public health, safety, and welfare.

(9) Upon request by the person initiating a construction project, the department may review and issue a construction permit to a construction project that is not subject to subsection (1) or (2) if the department determines that the review will promote the public health, safety, and welfare.

(10) The department shall assess a fee for each review conducted under this section. The fee is .5% of the first \$1,000,000.00 of capital expenditure and .85% of any amount over \$1,000,000.00 of capital expenditure, up to a maximum of \$30,000.00.

(11) As used in this section, "capital expenditure" means that term as defined in section 22203(2), except that it does not include the cost of equipment that is not fixed equipment.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1988, Act 332, Eff. Oct. 1, 1988 ;—Am. 1990, Act 331, Imd. Eff. Dec. 21, 1990 ;—Am. 1991, Act 13, Imd. Eff. Apr. 25, 1991 ;—Am. 1993, Act 88, Imd. Eff. July 9, 1993 ;—Am. 2002, Act 683, Imd. Eff. Dec. 30, 2002.

333.20151 Cooperation; professional advice and consultation.

A licensee or certificate holder shall cooperate with the department in carrying out its responsibility under this article. The department shall, to the extent allowed by law, provide professional advice and consultation as to the quality of facility or agency aspects of health care and services provided by the applicant or licensee.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 2000, Act 171, Imd. Eff. June 20, 2000.

333.20152 Certification by licensee; developing facilities and programs of care; rating individuals for purposes of reimbursement.

(1) A licensee shall certify to the department as part of its application for licensing and certification, that:

(a) All phases of its operation, including its training programs, comply with state and federal laws prohibiting discrimination. The applicant shall direct the administrator of the health facility or agency to take the necessary action to assure that the facility or agency is, in fact, so operated.

(b) Selection and appointment of physicians to its medical staff is without discrimination on the basis of licensure or registration as doctors of medicine or doctors of osteopathic medicine and surgery.

(2) This section does not prohibit a health facility or agency from developing facilities and programs of care that are for specific ages or sexes or rating individuals for purposes of determining appropriate reimbursement for care and services.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1981, Act 111, Imd. Eff. July 17, 1981.

333.20155 Visits to health facilities and agencies, clinical laboratories, nursing homes, hospices, and hospitals; purposes; waiver; confidentiality of accreditation information; limitation and effect; consultation engineering survey; summary of substantial noncompliance or deficiencies and hospital response; investigations or inspections; prior notice; misdemeanor; consultation visits; record; periodic reports; access to documents; confidentiality; disclosure; delegation of functions; voluntary inspections; forwarding evidence of violation to licensing agency; reports; clarification of terms; clinical process guidelines; clinical advisory committee; definitions.

(1) Except as otherwise provided in this section, the department of consumer and industry services shall make annual and other visits to each health facility or agency licensed under this article for the purposes of survey, evaluation, and consultation. A visit made pursuant to a complaint shall be unannounced. Except for a county medical care facility, a home for the aged, a nursing home, or a hospice residence, the department shall determine whether the visits that are not made pursuant to a complaint are announced or unannounced. Beginning June 20, 2001, the department shall assure that each newly hired nursing home surveyor, as part of his or her basic training, is assigned full-time to a licensed nursing home for at least 10 days within a 14-day period to observe actual operations outside of the survey process before the trainee begins oversight responsibilities. A member of a survey team shall not be employed by a licensed nursing home or a nursing home management company doing business in this state at the time of conducting a survey under this section. The department shall not assign an individual to be a member of a survey team for purposes of a survey, evaluation, or consultation visit at a nursing home in which he or she was an employee within the preceding 5 years.

(2) The department of consumer and industry services shall make at least a biennial visit to each licensed clinical laboratory, each nursing home, and each hospice residence for the purposes of survey, evaluation, and consultation. The department of consumer and industry services shall semiannually provide for joint training with nursing home surveyors and providers on at least 1 of the 10 most frequently issued federal citations in this state during the past calendar year. The department of consumer and industry services shall develop a protocol for the review of citation patterns compared to regional outcomes and standards and complaints regarding the nursing home survey process. The review will result in a report provided to the legislature. Except as otherwise provided in this subsection, beginning with his or her first full relicensure period after June 20, 2000, each member of a department of consumer and industry services nursing home survey team who is a health professional licensee under article 15 shall earn not less than 50% of his or her required continuing education credits, if any, in geriatric care. If a member of a nursing home survey team is a pharmacist licensed under article 15, he or she shall earn not less than 30% of his or her required continuing education credits in geriatric care.

(3) The department of consumer and industry services shall make a biennial visit to each hospital for survey and evaluation for the purpose of licensure. Subject to subsection (6), the department may waive the biennial visit required by this subsection if a hospital, as part of a timely application for license renewal, requests a waiver and submits both of the following and if all of the requirements of subsection (5) are met:

(a) Evidence that it is currently fully accredited by a body with expertise in hospital accreditation whose hospital accreditations are accepted by the United States department of health and human services for purposes of section 1865 of part C of title XVIII of the social security act, 42 U.S.C. 1395bb.

(b) A copy of the most recent accreditation report for the hospital issued by a body described in subdivision (a), and the hospital's responses to the accreditation report.

(4) Except as provided in subsection (8), accreditation information provided to the department of consumer and industry services under subsection (3) is confidential, is not a public record, and is not subject to court subpoena. The department shall use the accreditation information only as provided in this section and shall return the accreditation information to the hospital within a reasonable time after a decision on the waiver request is made.

(5) The department of consumer and industry services shall grant a waiver under subsection (3) if the accreditation report submitted under subsection (3)(b) is less than 2 years old and there is no indication

of substantial noncompliance with licensure standards or of deficiencies that represent a threat to public safety or patient care in the report, in complaints involving the hospital, or in any other information available to the department. If the accreditation report is 2 or more years old, the department may do 1 of the following:

(a) Grant an extension of the hospital's current license until the next accreditation survey is completed by the body described in subsection (3)(a).

(b) Grant a waiver under subsection (3) based on the accreditation report that is 2 or more years old, on condition that the hospital promptly submit the next accreditation report to the department.

(c) Deny the waiver request and conduct the visits required under subsection (3).

(6) This section does not prohibit the department from citing a violation of this part during a survey, conducting investigations or inspections pursuant to section 20156, or conducting surveys of health facilities or agencies for the purpose of complaint investigations or federal certification. This section does not prohibit the state fire marshal from conducting annual surveys of hospitals, nursing homes, and county medical care facilities.

(7) At the request of a health facility or agency, the department of consumer and industry services may conduct a consultation engineering survey of a health facility and provide professional advice and consultation regarding health facility construction and design. A health facility or agency may request a voluntary consultation survey under this subsection at any time between licensure surveys. The fees for a consultation engineering survey are the same as the fees established for waivers under section 20161(10).

(8) If the department of consumer and industry services determines that substantial noncompliance with licensure standards exists or that deficiencies that represent a threat to public safety or patient care exist based on a review of an accreditation report submitted pursuant to subsection (3)(b), the department shall prepare a written summary of the substantial noncompliance or deficiencies and the hospital's response to the department's determination. The department's written summary and the hospital's response are public documents.

(9) The department of consumer and industry services or a local health department shall conduct investigations or inspections, other than inspections of financial records, of a county medical care facility, home for the aged, nursing home, or hospice residence without prior notice to the health facility or agency. An employee of a state agency charged with investigating or inspecting the health facility or agency or an employee of a local health department who directly or indirectly gives prior notice regarding an investigation or an inspection, other than an inspection of the financial records, to the health facility or agency or to an employee of the health facility or agency, is guilty of a misdemeanor. Consultation visits that are not for the purpose of annual or follow-up inspection or survey may be announced.

(10) The department of consumer and industry services shall maintain a record indicating whether a visit and inspection is announced or unannounced. Information gathered at each visit and inspection, whether announced or unannounced, shall be taken into account in licensure decisions.

(11) The department of consumer and industry services shall require periodic reports and a health facility or agency shall give the department access to books, records, and other documents maintained by a health facility or agency to the extent necessary to carry out the purpose of this article and the rules promulgated under this article. The department shall respect the confidentiality of a patient's clinical record and shall not divulge or disclose the contents of the records in a manner that identifies an individual except under court order. The department may copy health facility or agency records as required to document findings.

(12) The department of consumer and industry services may delegate survey, evaluation, or consultation functions to another state agency or to a local health department qualified to perform those functions. However, the department shall not delegate survey, evaluation, or consultation functions to a local health department that owns or operates a hospice or hospice residence licensed under this article. The delegation shall be by cost reimbursement contract between the department and the state agency or local health department. Survey, evaluation, or consultation functions shall not be delegated to nongovernmental agencies, except as provided in this section. The department may accept voluntary inspections performed by an accrediting body with expertise in clinical laboratory accreditation under part 205 if the accrediting body utilizes forms acceptable to the department, applies the same licensing standards as applied to other clinical laboratories and provides the same information and data usually filed by the department's own employees when engaged in similar inspections or surveys. The voluntary inspection described in this subsection shall be agreed upon by both the licensee and the department.

(13) If, upon investigation, the department of consumer and industry services or a state agency determines that an individual licensed to practice a profession in this state has violated the applicable licensure statute or the rules promulgated under that statute, the department, state agency, or local health department shall forward the evidence it has to the appropriate licensing agency.

NOTE: 333.20155 (14) to (24) applies to nursing homes.

(25) Nothing in this amendatory act shall be construed to limit the requirements of related state and federal law.

(26) As used in this section:

(a) "Title XVIII" means title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2, 1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5, 1395j to 1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28, 1395x to 1395yy, and 1395bbb to 1395ggg.

(b) "Title XIX" means title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979 ;—Am. 1981, Act 111, Imd. Eff. July 17, 1981 ;—Am. 1982, Act 474, Eff. Mar. 30, 1983 ;—Am. 1992, Act 80, Imd. Eff. June 2, 1992 ;—Am. 1996, Act 267, Imd. Eff. June 12, 1996 ;—Am. 2000, Act 170, Imd. Eff. June 20, 2000 ;—Am. 2000, Act 171, Imd. Eff. June 20, 2000 ;—Am. 2001, Act 218, Imd. Eff. Dec. 28, 2001.

333.20156 Entering premises of applicant or licensee; enforcement of rules; certificate of approval from state fire marshal division; applicability of subsections (2) and (3).

(1) A representative of the department of public health or the state fire marshal division of the department of state police, upon presentation of proper identification, may enter the premises of an applicant or licensee at any reasonable time to determine whether the applicant or licensee meets the requirements of this article and the rules promulgated under this article. The director; the director of social services; the state fire marshal; the director of the office of services to the aging; or the director of a local health department; or an authorized representative of the director, the director of social services, the state fire marshal, the director of the office of services to the aging, or the director of a local health department may enter on the premises of an applicant or licensee under part 217 at any time in the course of carrying out program responsibilities.

(2) The state fire marshal division of the department of state police shall enforce rules promulgated by the state fire safety board for health facilities and agencies to assure that physical facilities owned, maintained, or operated by a health facility or agency are planned, constructed, and maintained in a manner to protect the health, safety, and welfare of patients.

(3) The department of public health shall not issue a license or certificate to a health facility or agency until it receives an appropriate certificate of approval from the state fire marshal division of the department of state police. For purposes of this section, a decision of the state fire marshal division of the department of state police to issue a certificate controls over that of a local fire department.

(4) Subsections (2) and (3) do not apply to a health facility or an agency licensed under part 205, 209, or 210.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979 ;—Am. 1982, Act 474, Eff. Mar. 30, 1983 ;—Am. 1986, Act 78, Imd. Eff. Apr. 7, 1986 ;—Am. 1990, Act 179, Imd. Eff. July 2, 1990.

333.20161 Fees and assessments for health facility and agency licenses and certificates of need; surcharge; fee for provisional license or temporary permit; fee to recover cost of proficiency evaluation samples; fee for reissuance of clinical laboratory license; cost of licensure activities; application fee for waiver under § 333.21564; travel expenses; fees for licensure or renewal under part 209; deposit of fees; use of quality assurance assessment; earmarking; "medicaid" defined.

(1) The department shall assess fees and other assessments for health facility and agency licenses and certificates of need on an annual basis as provided in this article. Except as otherwise provided in this article, fees and assessments shall be paid in accordance with the following schedule:

(a) Freestanding surgical outpatient facilities \$238.00 per facility.

(b) Hospitals	\$8.28 per licensed bed.
(c) Nursing homes, county medical care facilities, and hospital long-term care units	\$2.20 per licensed bed.
(d) Homes for the aged	\$6.27 per licensed bed.
(e) Clinical laboratories	\$475.00 per laboratory.
(f) Hospice residences	\$200.00 per license survey; and \$20.00 per licensed bed.
(g) Subject to subsection (13), quality assurance assessment for nongovernmentally owned nursing homes and hospital long-term care units	an amount resulting in not more than 6% of total industry revenues.
(h) Subject to subsection (14), quality assurance assessment for hospitals	at a fixed or variable rate that generates funds not more than the maximum allowable under the federal matching requirements, after consideration for the amounts in subsection (14)(a) and (k).

(2) If a hospital requests the department to conduct a certification survey for purposes of title XVIII or title XIX of the social security act, the hospital shall pay a license fee surcharge of \$23.00 per bed. As used in this subsection, "title XVIII" and "title XIX" mean those terms as defined in section 20155.

(3) The base fee for a certificate of need is \$750.00 for each application. For a project requiring a projected capital expenditure of more than \$150,000.00 but less than \$1,500,000.00, an additional fee of \$2,000.00 shall be added to the base fee. For a project requiring a projected capital expenditure of \$1,500,000.00 or more, an additional fee of \$3,500.00 shall be added to the base fee.

(4) If licensure is for more than 1 year, the fees described in subsection (1) are multiplied by the number of years for which the license is issued, and the total amount of the fees shall be collected in the year in which the license is issued.

(5) Fees described in this section are payable to the department at the time an application for a license, permit, or certificate is submitted. If an application for a license, permit, or certificate is denied or if a license, permit, or certificate is revoked before its expiration date, the department shall not refund fees paid to the department.

(6) The fee for a provisional license or temporary permit is the same as for a license. A license may be issued at the expiration date of a temporary permit without an additional fee for the balance of the period for which the fee was paid if the requirements for licensure are met.

(7) The department may charge a fee to recover the cost of purchase or production and distribution of proficiency evaluation samples that are supplied to clinical laboratories pursuant to section 20521(3).

(8) In addition to the fees imposed under subsection (1), a clinical laboratory shall submit a fee of \$25.00 to the department for each reissuance during the licensure period of the clinical laboratory's license.

(9) Except for the licensure of clinical laboratories, not more than half the annual cost of licensure activities as determined by the department shall be provided by license fees.

(10) The application fee for a waiver under section 21564 is \$200.00 plus \$40.00 per hour for the professional services and travel expenses directly related to processing the application. The travel expenses shall be calculated in accordance with the state standardized travel regulations of the department of management and budget in effect at the time of the travel.

(11) An applicant for licensure or renewal of licensure under part 209 shall pay the applicable fees set forth in part 209.

(12) Except as otherwise provided in this section, the fees and assessments collected under this section shall be deposited in the state treasury, to the credit of the general fund.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1981, Act 76, Eff. Oct. 1, 1981 ;—Am. 1984, Act 376, Eff. Mar. 29, 1985 ;—Am. 1987, Act 217, Imd. Eff. Dec. 22, 1987 ;—Am. 1988, Act 332, Eff. Oct. 1, 1988 ;—Am. 1990, Act 179, Imd. Eff. July 2, 1990 ;—Am. 1990, Act 252, Imd. Eff. Oct. 12, 1990 ;—Am. 1996, Act 267, Imd. Eff. June 12, 1996 ;—Am. 2000, Act 253, Imd. Eff. June 29, 2000 ;—Am. 2002, Act 303, Imd. Eff. May 10, 2002 ;—Am. 2002, Act 562, Imd. Eff. Oct. 1, 2002 ;—Am. 2003, Act 113, Imd. Eff. July 24, 2003 ;—Am. 2003, Act 234, Imd. Eff. Dec. 29, 2003.

333.20162 License; receipt of completed application; issuance of license within certain period of time; nonrenewable temporary permit; provisional license; procedure for closing facility; order to licensee upon finding of noncompliance; notice, hearing, and status requirements; report; "completed application" defined.

(1) Beginning on the effective date of the amendatory act that added section 20935, upon a determination that a health facility or agency is in compliance with this article and the rules promulgated under this article, the department shall issue an initial license within 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make the notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. If the department identifies a deficiency or requires the fulfillment of a corrective action plan, the 6-month period is tolled until either of the following occurs:

(a) Upon notification by the department of a deficiency, until the date the requested information is received by the department.

(b) Upon notification by the department that a corrective action plan is required, until the date the department determines the requirements of the corrective action plan have been met.

(2) The determination of the completeness of an application does not operate as an approval of the application for the license and does not confer eligibility of an applicant determined otherwise ineligible for issuance of a license.

(3) Except as otherwise provided in this subsection, if the department fails to issue or deny a license within the time period required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next licensure application, if any, by 15%. Failure to issue or deny a license within the time period required under this section does not allow the department to otherwise delay processing an application. The completed application shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based upon the fact that the application fee was refunded or discounted under this subsection. The department may issue a nonrenewable temporary permit for not more than 6 months if additional time is needed to make a proper investigation or to permit the applicant to undertake remedial action related to operational or procedural deficiencies or items of noncompliance. A temporary permit shall not be issued to cover deficiencies in physical plant requirements.

(4) Except as provided in part 217, the department may issue a provisional license for not more than 3 consecutive years to an applicant who temporarily is unable to comply with the rules as to the physical plant owned, maintained, or operated by a health facility or agency except as otherwise provided in this article. A provisional license shall not be issued to a new health facility or agency or a facility or agency whose ownership is transferred after September 30, 1978, unless the facility or agency was licensed and operating under this article or a prior law for not less than 5 years. Provisional licensure under acts repealed by this code shall be counted against the 3-year maximum for licensure.

(5) The department, in order to protect the people of this state, shall provide a procedure for the orderly closing of a facility if it is unable to maintain its license under this section.

(6) Except as provided in part 217, the department, upon finding that a health facility or agency is not operating in accord with the requirements of its license, may:

(a) Issue an order directing the licensee to:

(i) Discontinue admissions.

(ii) Transfer selected patients out of the facility.

(iii) Reduce its licensed capacity.

(iv) Comply with specific requirements for licensure or certification as appropriate.

(b) Through the office of the attorney general, initiate misdemeanor proceedings against the licensee as provided in section 20199(1).

(7) An order issued under subsection (6) shall be governed by the notice and hearing requirements of section 20168(1) and the status requirements of section 20168(2).

(8) Beginning October 1, 2005, the director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house

of representatives concerned with public health issues. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial applications the department received and completed within the 6-month time period required under subsection (1).

(b) The number of applications requiring a request for additional information.

(c) The number of applications denied.

(d) The average processing time for initial licenses granted after the 6-month period.

(e) The number of temporary permits issued under subsection (3).

(f) The number of initial license applications not issued within the 6-month period and the amount of money returned to applicants under subsection (3).

(9) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979 ;—Am. 2004, Act 284, Imd. Eff. July 23, 2004.

333.20164 Duration of license or certification; license, certification, or certificate of need nontransferable; transfer of ownership or ownership interest; notice; application for license and certification.

(1) A license, certification, provisional license, or limited license is valid for not more than 1 year after the date of issuance, except as provided in section 20511 or part 209 or 210. A license for a facility licensed under part 215 shall be valid for 2 years, except that provisional and limited licenses may be valid for 1 year.

(2) A license, certification, or certificate of need is not transferable and shall state the persons, buildings, and properties to which it applies. Applications for licensure or certification because of transfer of ownership or essential ownership interest shall not be acted upon until satisfactory evidence is provided of compliance with part 222.

(3) If ownership is not voluntarily transferred, the department shall be notified immediately and the new owner shall apply for a license and certification not later than 30 days after the transfer.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1981, Act 111, Imd. Eff. July 17, 1981 ;—Am. 1982, Act 474, Eff. Mar. 30, 1983 ;—Am. 1988, Act 332, Eff. Oct. 1, 1988 ;—Am. 1990, Act 179, Imd. Eff. July 2, 1990.

333.20165 Denying, limiting, suspending, or revoking license or certification; notice of intent; imposition of administrative fine.

(1) Except as otherwise provided in this section, after notice of intent to an applicant or licensee to deny, limit, suspend, or revoke the applicant's or licensee's license or certification and an opportunity for a hearing, the department may deny, limit, suspend, or revoke the license or certification or impose an administrative fine on a licensee if 1 or more of the following exist:

(a) Fraud or deceit in obtaining or attempting to obtain a license or certification or in the operation of the licensed health facility or agency.

(b) A violation of this article or a rule promulgated under this article.

(c) False or misleading advertising.

(d) Negligence or failure to exercise due care, including negligent supervision of employees and subordinates.

(e) Permitting a license or certificate to be used by an unauthorized health facility or agency.

(f) Evidence of abuse regarding a patient's health, welfare, or safety or the denial of a patient's rights.

(g) Failure to comply with section 10102a(7).

(h) Failure to comply with part 222 or a term, condition, or stipulation of a certificate of need issued under part 222, or both.

(i) A violation of section 20197(1).

(2) The department may deny an application for a license or certification based on a finding of a condition or practice that would constitute a violation of this article if the applicant were a licensee.

(3) Denial, suspension, or revocation of an individual emergency medical services personnel license under part 209 is governed by section 20958.

(4) If the department determines under subsection (1) that a health facility or agency has violated section 20197(1), the department shall impose an administrative fine of \$5,000,000.00 on the health facility or agency.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1986, Act 186, Eff. Oct. 7, 1986 ;—Am. 1988, Act 332, Eff. Oct. 1, 1988 ;—Am. 1990, Act 179, Imd. Eff. July 2, 1990 ;—Am. 1998, Act 108, Eff. Mar. 23, 1999.

333.20166 Notice of intent to deny, limit, suspend, or revoke license or certification; service; contents; hearing; record; transcript; determination; powers of department; judicial order to appear and give testimony; contempt; failure to show need for health facility or agency.

(1) Notice of intent to deny, limit, suspend, or revoke a license or certification shall be given by certified mail or personal service, shall set forth the particular reasons for the proposed action, and shall fix a date, not less than 30 days after the date of service, on which the applicant or licensee shall be given the opportunity for a hearing before the director or the director's authorized representative. The hearing shall be conducted in accordance with the administrative procedures act of 1969 and rules promulgated by the department. A full and complete record shall be kept of the proceeding and shall be transcribed when requested by an interested party, who shall pay the cost of preparing the transcript.

(2) On the basis of a hearing or on the default of the applicant or licensee, the department may issue, deny, limit, suspend, or revoke a license or certification. A copy of the determination shall be sent by certified mail or served personally upon the applicant or licensee. The determination becomes final 30 days after it is mailed or served, unless the applicant or licensee within the 30 days appeals the decision to the circuit court in the county of jurisdiction or to the Ingham county circuit court.

(3) The department may establish procedures, hold hearings, administer oaths, issue subpoenas, or order testimony to be taken at a hearing or by deposition in a proceeding pending at any stage of the proceeding. A person may be compelled to appear and testify and to produce books, papers, or documents in a proceeding.

(4) In case of disobedience of a subpoena, a party to a hearing may invoke the aid of the circuit court of the jurisdiction in which the hearing is held to require the attendance and testimony of witnesses. The circuit court may issue an order requiring an individual to appear and give testimony. Failure to obey the order of the circuit court may be punished by the court as a contempt.

(5) The department shall not deny, limit, suspend, or revoke a license on the basis of an applicant's or licensee's failure to show a need for a health facility or agency unless the health facility or agency has not obtained a certificate of need required by part 222.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1988, Act 332, Eff. Oct. 1, 1988.

333.20168 Emergency order limiting, suspending, or revoking license; limiting reimbursements or payments; hearing; contents of order; order not suspended by hearing.

(1) Upon a finding that a deficiency or violation of this article or the rules promulgated under this article seriously affects the health, safety, and welfare of individuals receiving care or services in or from a licensed health facility or agency, the department may issue an emergency order limiting, suspending, or revoking the license of the health facility or agency. If the department of public health issues an emergency order affecting the license of a nursing home, the department of public health may request the department of social services to limit reimbursements or payments authorized under section 21718. The department shall provide an opportunity for a hearing within 5 working days after issuance of the order.

(2) An order shall incorporate the department's findings. The conduct of a hearing under this section shall not suspend the department's order.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979.

333.20170 Medical records access; compliance.

A health facility or agency shall comply with the medical records access act.

History: Add. 2004, Act 48, Imd. Eff. Apr. 1, 2004

333.20171 Rules implementing article; rules promulgated under §333.21563.

(1) The department, after obtaining approval of the advisory commission, shall promulgate and enforce rules to implement this article, including rules necessary to enable a health facility or agency to qualify for

and receive federal funds available for patient care or for projects involving new construction, additions, modernizations, or conversions.

(2) The rules applicable to health facilities or agencies shall be uniform insofar as is reasonable.

(3) The rules shall establish standards relating to:

(a) Ownership.

(b) Reasonable disclosure of ownership interests in proprietary corporations and of financial interests of trustees of voluntary, nonprofit corporations and owners of proprietary corporations and partnerships.

(c) Organization and function of the health facility or agency, owner, operator, and governing body.

(d) Administration.

(e) Professional and nonprofessional staff, services, and equipment appropriate to implement section 20141(3).

(f) Policies and procedures.

(g) Fiscal and medical audit.

(h) Utilization and quality control review.

(i) Physical plant including planning, construction, functional design, sanitation, maintenance, housekeeping, and fire safety.

(j) Arrangements for the continuing evaluation of the quality of health care provided.

(k) Other pertinent organizational, operational, and procedural requirements for each type of health facility or agency.

(4) The rules promulgated under section 21563 for the designation of rural community hospitals may also specify all of the following:

(a) Maximum bed size.

(b) The level of services to be provided in each category as described in section 21562(2).

(c) Requirements for transfer agreements with other hospitals to assure efficient and appropriate patient care.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979 ;—Am. 1990, Act 252, Imd. Eff. Oct. 12, 1990.

333.20172 Policies and procedures; publication and distribution.

The department may publish and distribute written policies and procedures in the form of departmental letters necessary to the effective administration of this article.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.20173 Repealed, 2006, Act. 28, Imd. Eff. April 1, 2006

Sec. 20173a. Health facility or agency that is nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency; employees or applicants for employment; prohibitions; criminal history check; condition of continued employment; establishment of automated fingerprint identification system database; report to legislature; web-based system; definitions.

(1) Except as otherwise provided in subsection (2), a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency shall not employ, independently contract with, or grant clinical privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the health facility or agency after the effective date of this section if the individual satisfies 1 or more of the following:

(a) Has been convicted of a relevant crime described under 42 USC 1320a-7.

(b) Has been convicted of any of the following felonies, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described in this subdivision, other than a felony for a relevant crime described under 42 USC 1320a-7, unless 15 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or clinical privileges or the date of the execution of the independent contract:

(i) A felony that involves the intent to cause death or serious impairment of a body function, that results in death or serious impairment of a body function, that involves the use of force or violence, or that involves the threat of the use of force or violence.

- (ii) A felony involving cruelty or torture.
- (iii) A felony under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.
- (iv) A felony involving criminal sexual conduct.
- (v) A felony involving abuse or neglect.
- (vi) A felony involving the use of a firearm or dangerous weapon.
- (vii) A felony involving the diversion or adulteration of a prescription drug or other medications.
- (c) Has been convicted of a felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7 or a felony described under subdivision (b), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction prior to the date of application for employment or clinical privileges or the date of the execution of the independent contract.
- (d) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 10 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:
 - (i) A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.
 - (ii) A misdemeanor under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.
 - (iii) A misdemeanor involving criminal sexual conduct.
 - (iv) A misdemeanor involving cruelty or torture unless otherwise provided under subdivision (e).
 - (v) A misdemeanor involving abuse or neglect.
- (e) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 5 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:
 - (i) A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age.
 - (ii) A misdemeanor involving home invasion.
 - (iii) A misdemeanor involving embezzlement.
 - (iv) A misdemeanor involving negligent homicide.
 - (v) A misdemeanor involving larceny unless otherwise provided under subdivision (g).
 - (vi) A misdemeanor of retail fraud in the second degree unless otherwise provided under subdivision (g).
 - (vii) Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under subdivision (d), (f), or (g).
- (f) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the 3 years immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:
 - (i) A misdemeanor for assault if there was no use of a firearm or dangerous weapon and no intent to commit murder or inflict great bodily injury.
 - (ii) A misdemeanor of retail fraud in the third degree unless otherwise provided under subdivision (g).
 - (iii) A misdemeanor under part 74 unless otherwise provided under subdivision (g).
- (g) Has been convicted of any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7, or a state or federal crime that is substantially similar to the misdemeanors described in this subdivision, within the year immediately preceding the date of application for employment or clinical privileges or the date of the execution of the independent contract:
 - (i) A misdemeanor under part 74 if the individual, at the time of conviction, is under the age of 18.
 - (ii) A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the age of 16.
- (h) Is the subject of an order or disposition under section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(i) Has been the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency pursuant to an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) Except as otherwise provided in subsection (5), a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency shall not employ, independently contract with, or grant privileges to an individual who regularly has direct access to or provides direct services to patients or residents in the health facility or agency after the effective date of this section until the health facility or agency conducts a criminal history check in compliance with subsection (4). This subsection and subsection (1) do not apply to any of the following:

(a) An individual who is employed by, under independent contract to, or granted clinical privileges in a health facility or agency before the effective date of this section. Within 24 months after the effective date of this section, an individual who is exempt under this subdivision shall provide the department of state police with a set of fingerprints and the department of state police shall input those fingerprints into the automated fingerprint identification system database established under subsection (12). An individual who is exempt under this subdivision is not limited to working within the health facility or agency with which he or she is employed by, under independent contract to, or granted clinical privileges on the effective date of this section. That individual may transfer to another health facility or agency that is under the same ownership with which he or she was employed, under contract, or granted privileges. If that individual wishes to transfer to another health facility or agency that is not under the same ownership, he or she may do so provided that a criminal history check is conducted by the new health facility or agency in accordance with subsection(4). If an individual who is exempt under this subdivision is subsequently convicted of a crime described under subsection (1)(a) through (g) or found to be the subject of a substantiated finding described under subsection (1)(i) or an order or disposition described under subsection (1)(h), or is found to have been convicted of a relevant crime described under subsection (1)(a), then he or she is no longer exempt and shall be terminated from employment or denied employment.

(b) An individual who is an independent contractor with a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency if the services for which he or she is contracted is not directly related to the provision of services to a patient or resident or if the services for which he or she is contracted allows for direct access to the patients or residents but is not performed on an ongoing basis. This exception includes, but is not limited to, an individual who independently contracts with the health facility or agency to provide utility, maintenance, construction, or communications services.

(3) An individual who applies for employment either as an employee or as an independent contractor or for clinical privileges with a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency and has received a good faith offer of employment, an independent contract, or clinical privileges from the health facility or agency shall give written consent at the time of application for the department of state police to conduct an initial criminal history check under this section, along with identification acceptable to the department of state police.

(4) Upon receipt of the written consent and identification required under subsection (3), a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency that has made a good faith offer of employment or an independent contract or clinical privileges to the applicant shall make a request to the department of state police to conduct a criminal history check on the applicant, to input the applicant's fingerprints into the automated fingerprint identification system database, and to forward the applicant's fingerprints to the federal bureau of investigation. The department of state police shall request the federal bureau of investigation to make a determination of the existence of any national criminal history pertaining to the applicant. The applicant shall provide the department of state police with a set of fingerprints. The request shall be made in a manner prescribed by the department of state police. The health facility or agency shall make the written consent and identification available to the department of state police. The health facility or agency shall make a request to the relevant licensing or regulatory department to conduct a check of all relevant registries established pursuant to federal and state law and regulations for any substantiated findings of abuse, neglect, or misappropriation of property. If the department of

state police or the federal bureau of investigation charges a fee for conducting the initial criminal history check, the charge shall be paid by or reimbursed by the department with federal funds as provided to implement a pilot program for national and state background checks on direct patient access employees of long-term care facilities or providers in accordance with section 307 of the medicare prescription drug, improvement, and modernization act of 2003, Public Law 108-173. The health facility or agency shall not seek reimbursement for a charge imposed by the department of state police or the federal bureau of investigation from the individual who is the subject of the initial criminal history check. A health facility or agency, a prospective employee, or a prospective independent contractor covered under this section may not be charged for the cost of an initial criminal history check required under this section. The department of state police shall conduct a criminal history check on the applicant named in the request. The department of state police shall provide the department with a written report of the criminal history check conducted under this subsection if the criminal history check contains any criminal history record information. The report shall contain any criminal history record information on the applicant maintained by the department of state police. The department of state police shall provide the results of the federal bureau of investigation determination to the department within 30 days after the request is made. If the requesting health facility or agency is not a state department or agency and if a criminal conviction is disclosed on the written report of the criminal history check or the federal bureau of investigation determination, the department shall notify the health facility or agency and the applicant in writing of the type of crime disclosed on the written report of the criminal history check or the federal bureau of investigation determination without disclosing the details of the crime. Any charges imposed by the department of state police or the federal bureau of investigation for conducting an initial criminal history check or making a determination under this subsection shall be paid in the manner required under this subsection. The notice shall include a statement that the applicant has a right to appeal a decision made by the health facility or agency regarding his or her employment eligibility based on the criminal background check. The notice shall also include information regarding where to file and describing the appellate procedures established under section 20173b.

(5) If a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency determines it necessary to employ or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history check under this section, the health facility or agency may conditionally employ or grant conditional clinical privileges to the individual if all of the following apply:

(a) The health facility or agency requests the criminal history check under this section upon conditionally employing or conditionally granting clinical privileges to the individual.

(b) The individual signs a statement in writing that indicates all of the following:

(i) That he or she has not been convicted of 1 or more of the crimes that are described in subsection (1)(a) through (g) within the applicable time period prescribed by each subdivision respectively.

(ii) That he or she is not the subject of an order or disposition described in subsection (1)(h).

(iii) That he or she has not been the subject of a substantiated finding as described in subsection (1)(i).

(iv) The individual agrees that, if the information in the criminal history check conducted under this section does not confirm the individual's statements under subparagraphs (i) through (iii), his or her employment or clinical privileges will be terminated by the health facility or agency as required under subsection (1) unless and until the individual appeals and can prove that the information is incorrect.

(v) That he or she understands the conditions described in subparagraphs (i) through (iv) that result in the termination of his or her employment or clinical privileges and that those conditions are good cause for termination.

(6) The department shall develop and distribute a model form for the statement required under subsection (5)(b). The department shall make the model form available to health facilities or agencies subject to this section upon request at no charge.

(7) If an individual is employed as a conditional employee or is granted conditional clinical privileges under subsection (5), and the report described in subsection (4) does not confirm the individual's statement under subsection(5)(b)(i) through (iii), the health facility or agency shall terminate the individual's employment or clinical privileges as required by subsection (1).

(8) An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subsection (5)(b)(i) through (iii) is guilty

of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$500.00, or both.

(9) A health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency shall use criminal history record information obtained under subsection (4) only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges in the position for which he or she has applied and for the purposes of subsections (5) and (7). A health facility or agency or an employee of the health facility or agency shall not disclose criminal history record information obtained under subsection (4) to a person who is not directly involved in evaluating the applicant's qualifications for employment, an independent contract, or clinical privileges. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection (4) in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both. Upon written request from another health facility or agency, psychiatric facility or intermediate care facility for people with mental retardation, or adult foster care facility that is considering employing, independently contracting with, or granting clinical privileges to an individual, a health facility or agency that has obtained criminal history record information under this section on that individual shall, with the consent of the applicant, share the information with the requesting health facility or agency, psychiatric facility or intermediate care facility for people with mental retardation, or adult foster care facility. Except for a knowing or intentional release of false information, a health facility or agency has no liability in connection with a criminal background check conducted under this section or the release of criminal history record information under this subsection.

(10) As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall do each of the following:

(a) Agree in writing to report to the health facility or agency immediately upon being arraigned for 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon being convicted of 1 or more of the criminal offenses listed in subsection (1)(a) through (g), upon becoming the subject of an order or disposition described under subsection (1)(h), and upon being the subject of a substantiated finding of neglect, abuse, or misappropriation of property as described in subsection (1)(i). Reporting of an arraignment under this subdivision is not cause for termination or denial of employment.

(b) If a set of fingerprints is not already on file with the department of state police, provide the department of state police with a set of fingerprints.

(11) In addition to sanctions set forth in section 20165, a licensee, owner, administrator, or operator of a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency who knowingly and willfully fails to conduct the criminal history checks as required under this section is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both.

(12) In collaboration with the department of state police, the department of information technology shall establish an automated fingerprint identification system database that would allow the department of state police to store and maintain all fingerprints submitted under this section and would provide for an automatic notification if and when a subsequent criminal arrest fingerprint card submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the department of state police shall immediately notify the department and the department shall immediately contact the respective health facility or agency with which that individual is associated. Information in the database established under this subsection is confidential, is not subject to disclosure under the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes.

(13) Within 1 year after the effective date of the amendatory act that added this section, the department shall submit a written report to the legislature regarding each of the following:

(a) The impact and effectiveness of this amendatory act.

(b) The feasibility of implementing criminal history checks on volunteers who work in those health facilities or agencies and on state agency employees who are involved in the licensing of those health facilities or agencies and regulation of those employees.

(c) The amount of federal funds provided to implement a pilot program for national and state background checks on direct access employees of long-term care facilities or providers, the amount of those funds

expended to date, and the amount of those funds remaining.

(14) Within 3 years after the effective date of this section, the department shall submit a written report to the legislature outlining a plan to cover the costs of the criminal history checks required under this section if federal funding is no longer available or is inadequate to cover those costs.

(15) By March 1, 2007, the department and the department of state police shall develop and implement an electronic web-based system to assist those health facilities and agencies required to check relevant registries and conduct criminal history checks of its employees and independent contractors and to provide for an automated notice to those health facilities or agencies for those individuals inputted in the system who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding of abuse, neglect, or misappropriation of property.

(16) As used in this section:

(a) "Adult foster care facility" means an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(b) "Direct access" means access to a patient or resident or to a patient's or resident's property, financial information, medical records, treatment information, or any other identifying information.

(c) "Home health agency" means a person certified by medicare whose business is to provide to individuals in their places of residence other than in a hospital, nursing home, or county medical care facility 1 or more of the following services: nursing services, therapeutic services, social work services, homemaker services, home health aide services, or other related services.

(d) "Independent contract" means a contract entered into by a health facility or agency with an individual who provides the contracted services independently or a contract entered into by a health facility or agency with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the health facility or agency on behalf of the organization or agency.

(e) "Medicare" means benefits under the federal medicare program established under title XVIII of the social security act, 42 USC 1395 to 1395ggg.

Sec. 20173b. Individual disqualified or denied employment pursuant to MCL 330.1134a; appeal; report to legislature; "business day" defined.

(1) An individual who has been disqualified from or denied employment by a health facility or agency that is a nursing home, county medical care facility, hospice, hospital that provides swing bed services, home for the aged, or home health agency or by a psychiatric facility or intermediate care facility for people with mental retardation based on a criminal history check conducted pursuant to section 20173 or 20173a or pursuant to section 134a of the mental health code, 1974 PA 258, MCL 330.1134a, respectively, may appeal to the department if he or she believes that the criminal history report is inaccurate, and the appeal shall be conducted as a contested case hearing pursuant to the administrative procedures act of 1969. The individual shall file the appeal with the director of the department within 15 business days after receiving the written report of the criminal history check unless the conviction contained in the criminal history report is one that may be expunged or set aside. If an individual has been disqualified or denied employment based on a conviction that may be expunged or set aside, then he or she shall file the appeal on a form provided by the department within 15 business days after a court order granting or denying his or her application to expunge or set aside that conviction is granted. If the order is granted and the conviction is expunged or set aside, then the individual shall not be disqualified or denied employment based solely on that conviction. The director shall review the appeal and issue a written decision within 30 business days after receiving the appeal. The decision of the director is final.

(2) One year after the effective date of this section and each year thereafter for the next 3 years, the department shall provide the legislature with a written report regarding the appeals process implemented under this section for employees subject to criminal history checks. The report shall include, but is not limited to, for the immediately preceding year the number of applications for appeal received, the number of inaccuracies found and appeals granted with regard to the criminal history checks conducted under section 20173a, the average number of days necessary to complete the appeals process for each appeal, and the number of appeals rejected without a hearing and a brief explanation of the denial.

(3) As used in this section, "business day" means a day other than a Saturday, Sunday, or any legal holiday.

History: Add. 2006, Act 28, Eff. Apr. 1, 2006

333.20175 Maintaining record for each patient; wrongfully altering or destroying records; noncompliance; fine; licensing and certification records as public records; confidentiality; disclosure; report or notice of disciplinary action; information provided in report; nature and use of certain records, data, and knowledge.

(1) A health facility or agency shall keep and maintain a record for each patient including a full and complete record of tests and examinations performed, observations made, treatments provided, and in the case of a hospital, the purpose of hospitalization. In addition to the sanctions set forth in section 20165, a hospital that fails to comply with this subsection is subject to an administrative fine of \$10,000.00.

(2) A hospital shall take precautions to assure that the records required by subsection (1) are not wrongfully altered or destroyed. A hospital that fails to comply with this subsection is subject to an administrative fine of \$10,000.00.

(3) Unless otherwise provided by law, the licensing and certification records required by this article are public records.

(4) Departmental officers and employees shall respect the confidentiality of patient clinical records and shall not divulge or disclose the contents of records in a manner that identifies an individual except pursuant to court order.

(5) A health facility or agency that employs, contracts with, or grants privileges to a health professional licensed or registered under article 15 shall report the following to the department of consumer and industry services not more than 30 days after it occurs:

(a) Disciplinary action taken by the health facility or agency against a health professional licensed or registered under article 15 based on the licensee's or registrant's professional competence, disciplinary action that results in a change of employment status, or disciplinary action based on conduct that adversely affects the licensee's or registrant's clinical privileges for a period of more than 15 days. As used in this subdivision, "adversely affects" means the reduction, restriction, suspension, revocation, denial, or failure to renew the clinical privileges of a licensee or registrant by a health facility or agency.

(b) Restriction or acceptance of the surrender of the clinical privileges of a licensee or registrant under either of the following circumstances:

(i) The licensee or registrant is under investigation by the health facility or agency.

(ii) There is an agreement in which the health facility or agency agrees not to conduct an investigation into the licensee's or registrant's alleged professional incompetence or improper professional conduct.

(c) A case in which a health professional resigns or terminates a contract or whose contract is not renewed instead of the health facility taking disciplinary action against the health professional.

(6) Upon request by another health facility or agency seeking a reference for purposes of changing or granting staff privileges, credentials, or employment, a health facility or agency that employs, contracts with, or grants privileges to health professionals licensed or registered under article 15 shall notify the requesting health facility or agency of any disciplinary or other action reportable under subsection (5) that it has taken against a health professional licensed or registered under article 15 and employed by, under contract to, or granted privileges by the health facility or agency.

(7) For the purpose of reporting disciplinary actions under this section, a health facility or agency shall include only the following in the information provided:

(a) The name of the licensee or registrant against whom disciplinary action has been taken.

(b) A description of the disciplinary action taken.

(c) The specific grounds for the disciplinary action taken.

(d) The date of the incident that is the basis for the disciplinary action.

(8) The records, data, and knowledge collected for or by individuals or committees assigned a professional review function in a health facility or agency, or an institution of higher education in this state that has colleges of osteopathic and human medicine, are confidential, shall be used only for the purposes provided in this article, are not public records, and are not subject to court subpoena.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1986, Act 174, Imd. Eff. July 7, 1986 ;—Am. 1993, Act 79, Eff. Apr. 1, 1994 ;—Am. 2000, Act 319, Imd. Eff. Oct. 24, 2000.

333.20176 Notice of violation' investigation of complaints, notice of proposed action; public record; appeal; reinvestigation.

(1) A person may notify the department of a violation of this article or of a rule promulgated under this article that the person believes exists. The department shall investigate each written complaint received and shall notify the complainant in writing of the results of a review or investigation of the complaint and any action proposed to be taken. Except as otherwise provided in sections 20180, 21743(1)(d), and 21799a, the name of the complainant and the charges contained in the complaint are a matter of public record.

(2) Except as otherwise provided in section 21799a, a complainant who is aggrieved by the decision of the department under this section may appeal to the director. After review of an appeal under this subsection, the director may order the department to reinvestigate the complaint.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979 ;—Am. 1994, Act 52, Imd. Eff. Mar. 31, 1994.

333.20176a Health facility or agency; prohibited conduct; violation; fine.

(1) A health facility or agency shall not discharge or discipline, threaten to discharge or discipline, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment because the employee or an individual acting on behalf of the employee does either or both of the following:

(a) In good faith reports or intends to report, verbally or in writing, the malpractice of a health professional or a violation of this article, article 7, or article 15 or a rule promulgated under this article, article 7, or article 15.

(b) Acts as an expert witness in a civil action involving medical malpractice or in an administrative action.

(2) In addition to the sanctions set forth in section 20165, a health facility or agency that violates subsection (1) is subject to an administrative fine of not more than \$10,000.00 for each violation.

History: Add. 1993, Act 79, Eff. Apr. 1, 1994 ;—Am. 1994, Act 52, Imd. Eff. Mar. 31, 1994.

333.20177 Action to restrain, enjoin, or prevent establishment, maintenance, or operation of health facility or agency.

Notwithstanding the existence and pursuit of any other remedy, the director, without posting a bond, may request the prosecuting attorney or attorney general to bring an action in the name of the people of this state to restrain, enjoin, or prevent the establishment, maintenance, or operation of a health facility or agency in violation of this article or rules promulgated under this article.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.20178 Nursing home, home for the aged, or county medical care facility; description of services to patients or residents with Alzheimer's disease; contents; "represents to the public" defined.

(1) Beginning not more than 90 days after the effective date of the amendatory act that added this section, a health facility or agency that is a nursing home, home for the aged, or county medical care facility that represents to the public that it provides inpatient care or services or residential care or services, or both, to persons with Alzheimer's disease or a related condition shall provide to each prospective patient, resident, or surrogate decision maker a written description of the services provided by the health facility or agency to patients or residents with Alzheimer's disease or a related condition. A written description shall include, but not be limited to, all of the following:

(a) The overall philosophy and mission reflecting the needs of patients or residents with Alzheimer's disease or a related condition.

(b) The process and criteria for placement in or transfer or discharge from a program for patients or residents with Alzheimer's disease or a related condition.

(c) The process used for assessment and establishment of a plan of care and its implementation.

(d) Staff training and continuing education practices.

(e) The physical environment and design features appropriate to support the function of patients or residents with Alzheimer's disease or a related condition.

(f) The frequency and types of activities for patients or residents with Alzheimer's disease or a related condition.

(g) Identification of supplemental fees for services provided to patients or residents with Alzheimer's disease or a related condition.

(2) As used in this section, "represents to the public" means advertises or markets the facility as providing specialized Alzheimer's or dementia care services.

History: Add. 2000, Act 500, Imd. Eff. Jan. 11, 2001.

333.20180 Health facility or agency; person making or assisting in originating, investigating, or preparing report or complaint; immunity and protection from civil or criminal liability; disclosure of identity; notice; "hospital" defined.

(1) A person employed by or under contract to a health facility or agency or any other person acting in good faith who makes a report or complaint including, but not limited to, a report or complaint of a violation of this article or a rule promulgated under this article; who assists in originating, investigating, or preparing a report or complaint; or who assists the department in carrying out its duties under this article is immune from civil or criminal liability that might otherwise be incurred and is protected under the whistleblowers' protection act, 1980 PA 469, MCL 15.361 to 15.369. A person described in this subsection who makes or assists in making a report or complaint, or who assists the department as described in this subsection, is presumed to have acted in good faith. The immunity from civil or criminal liability granted under this subsection extends only to acts done pursuant to this article.

(2) Unless a person described in subsection (1) otherwise agrees in writing, the department shall keep the person's identity confidential until disciplinary proceedings under this article are initiated against the subject of the report or complaint and the person making or assisting in originating, investigating, or preparing the report or complaint is required to testify in the disciplinary proceedings. If disclosure of the person's identity is considered by the department to be essential to the disciplinary proceedings and if the person is the complainant, the department shall give the person an opportunity to withdraw the complaint before disclosure.

NOTE: 333.20180 (3) – (7) applies to hospitals.

History: Add. 1994, Act 52, Imd. Eff. Mar. 31, 1994 ;—Am. 2002, Act 731, Imd. Eff. Dec. 30, 2002.

333.20192 Do-not-resuscitate order; execution not required.

A health facility or agency shall not require the execution of a do-not-resuscitate order under the Michigan do-not-resuscitate procedure act as a condition for admission or receipt of services.

History: Add. 1996, Act 192, Eff. Aug. 1, 1996.

333.20198 Health facility, agency inpatient facility, or residential facility; prohibited conduct; violation as misdemeanor; penalty; nonapplicability of subsections (1) and (2).

(1) Subject to subsection (3), an individual shall not enter upon the premises of a health facility or agency that is an inpatient facility, an outpatient facility, or a residential facility for the purpose of engaging in an activity that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested and that actually causes a health facility or agency employee, patient, resident, or visitor to feel terrorized, frightened, intimidated, threatened, harassed, or molested. This subsection does not prohibit constitutionally protected activity or conduct that serves a legitimate purpose.

(2) An individual who violates subsection (1) is guilty of a misdemeanor, punishable by imprisonment for not more than 1 year or a fine of not less than \$1,000.00 or more than \$10,000.00, or both.

(3) Subsections (1) and (2) do not apply to a nursing home covered under sections 21763(5) and 21799c(1)(c).

History: Add. 1998, Act 270, Eff. Mar. 23, 1999.

333.20201 Policy describing rights and responsibilities of patients or residents; adoption; posting and distribution; contents; additional requirements; discharging, harassing, retaliating, or discriminating against patient exercising protected right; exercise of rights by patient's representative; informing patient or resident of policy; designation of person to exercise rights and responsibilities; additional patients' rights; definitions.

(1) A health facility or agency that provides services directly to patients or residents and is licensed under this article shall adopt a policy describing the rights and responsibilities of patients or residents admitted to the health facility or agency. Except for a licensed health maintenance organization which shall comply with chapter 35 of the insurance code of 1956, 1956 PA 218, MCL 500.3501 to 500.3580, the policy shall be posted at a public place in the health facility or agency and shall be provided to each member of the health facility or agency staff. Patients or residents shall be treated in accordance with the policy.

(2) The policy describing the rights and responsibilities of patients or residents required under subsection (1) shall include, as a minimum, all of the following:

- (a) A patient or resident shall not be denied appropriate care on the basis of race, religion, color, national origin, sex, age, disability, marital status, sexual preference, or source of payment.
- (b) An individual who is or has been a patient or resident is entitled to inspect, or receive for a reasonable fee, a copy of his or her medical record upon request in accordance with the medical records access act, 2004 PA 47, MCL 333.26261 to 333.26271. Except as otherwise permitted or required under the health insurance portability and accountability act of 1996, Public Law 104-191, or regulations promulgated under that act, 45 CFR parts 160 and 164, a third party shall not be given a copy of the patient's or resident's medical record without prior authorization of the patient or resident.
- (c) A patient or resident is entitled to confidential treatment of personal and medical records, and may refuse their release to a person outside the health facility or agency except as required because of a transfer to another healthcare facility, as required by law or third party payment contract, or as permitted or required under the health insurance portability and accountability act of 1996, Public Law 104-191, or regulations promulgated under that act, 45CFR parts 160 and 164.
- (d) A patient or resident is entitled to privacy, to the extent feasible, in treatment and in caring for personal needs with consideration, respect, and full recognition of his or her dignity and individuality.
- (e) A patient or resident is entitled to receive adequate and appropriate care, and to receive, from the appropriate individual within the health facility or agency, information about his or her medical condition, proposed course of treatment, and prospects for recovery, in terms that the patient or resident can understand, unless medically contraindicated as documented by the attending physician in the medical record.
- (f) A patient or resident is entitled to refuse treatment to the extent provided by law and to be informed of the consequences of that refusal. If a refusal of treatment prevents a health facility or agency or its staff from providing appropriate care according to ethical and professional standards, the relationship with the patient or resident may be terminated upon reasonable notice.
- (g) A patient or resident is entitled to exercise his or her rights as a patient or resident and as a citizen, and to this end may present grievances or recommend changes in policies and services on behalf of himself or herself or others to the health facility or agency staff, to governmental officials, or to another person of his or her choice within or outside the health facility or agency, free from restraint, interference, coercion, discrimination, or reprisal. A patient or resident is entitled to information about the health facility's or agency's policies and procedures for initiation, review, and resolution of patient or resident complaints.
- (h) A patient or resident is entitled to information concerning an experimental procedure proposed as a part of his or her care and has the right to refuse to participate in the experimental procedure without jeopardizing his or her continuing care.
- (i) A patient or resident is entitled to receive and examine an explanation of his or her bill regardless of the source of payment and to receive, upon request, information relating to financial assistance available through the health facility or agency.
- (j) A patient or resident is entitled to know who is responsible for and who is providing his or her direct care, is entitled to receive information concerning his or her continuing health needs and alternatives for meeting those needs, and to be involved in his or her discharge planning, if appropriate.
- (k) A patient or resident is entitled to associate and have private communications and consultations with his or her physician, attorney, or any other person of his or her choice and to send and receive personal mail unopened on the same day it is received at the health facility or agency, unless medically contraindicated as documented by the attending physician in the medical record. A patient's or resident's civil and religious liberties, including the right to independent personal decisions and the right to knowledge of available choices, shall not be infringed and the health facility or agency shall encourage

and assist in the fullest possible exercise of these rights. A patient or resident may meet with, and participate in, the activities of social, religious, and community groups at his or her discretion, unless medically contraindicated as documented by the attending physician in the medical record.

(l) A patient or resident is entitled to be free from mental and physical abuse and from physical and chemical restraints, except those restraints authorized in writing by the attending physician for a specified and limited time or as are necessitated by an emergency to protect the patient or resident from injury to self or others, in which case the restraint may only be applied by a qualified professional who shall set forth in writing the circumstances requiring the use of restraints and who shall promptly report the action to the attending physician. In case of a chemical restraint, a physician shall be consulted within 24 hours after the commencement of the chemical restraint.

(m) A patient or resident is entitled to be free from performing services for the health facility or agency that are not included for therapeutic purposes in the plan of care.

(n) A patient or resident is entitled to information about the health facility or agency rules and regulations affecting patient or resident care and conduct.

(o) A patient or resident is entitled to adequate and appropriate pain and symptom management as a basic and essential element of his or her medical treatment.

(3) The following additional requirements for the policy described in subsection (2) apply to licensees under parts 213 and 217:

(a) The policy shall be provided to each nursing home patient or home for the aged resident upon admission, and the staff of the facility shall be trained and involved in the implementation of the policy.

(b) Each nursing home patient may associate and communicate privately with persons of his or her choice. Reasonable, regular visiting hours, which shall be not less than 8 hours per day, and which shall take into consideration the special circumstances of each visitor, shall be established for patients to receive visitors. A patient may be visited by the patient's attorney or by representatives of the departments named in section 20156, during other than established visiting hours. Reasonable privacy shall be afforded for visitation of a patient who shares a room with another patient. Each patient shall have reasonable access to a telephone. A married nursing home patient or home for the aged resident is entitled to meet privately with his or her spouse in a room that assures privacy. If both spouses are residents in the same facility, they are entitled to share a room unless medically contraindicated and documented by the attending physician in the medical record.

(c) A nursing home patient or home for the aged resident is entitled to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other patients or residents, or unless medically contraindicated as documented by the attending physician in the medical record. Each nursing home patient or home for the aged resident shall be provided with reasonable space. At the request of a patient, a nursing home shall provide for the safekeeping of personal effects, funds, and other property of a patient in accordance with section 21767, except that a nursing home is not required to provide for the safekeeping of a property that would impose an unreasonable burden on the nursing home.

(d) A nursing home patient or home for the aged resident is entitled to the opportunity to participate in the planning of his or her medical treatment. A nursing home patient shall be fully informed by the attending physician of the patient's medical condition unless medically contraindicated as documented by a physician in the medical record. Each nursing home patient shall be afforded the opportunity to discharge himself or herself from the nursing home.

(e) A home for the aged resident may be transferred or discharged only for medical reasons, for his or her welfare or that of other residents, or for nonpayment of his or her stay, except as provided by title XVIII or title XIX. A nursing home patient may be transferred or discharged only as provided in sections 21773 to 21777. A nursing home patient or home for the aged resident is entitled to be given reasonable advance notice to ensure orderly transfer or discharge. Those actions shall be documented in the medical record.

(f) A nursing home patient or home for the aged resident is entitled to be fully informed before or at the time of admission and during stay of services available in the facility, and of the related charges including any charges for services not covered under title XVIII, or not covered by the facility's basic per diem rate. The statement of services provided by the facility shall be in writing and shall include those required to be offered on an as-needed basis.

(g) A nursing home patient or home for the aged resident is entitled to manage his or her own financial affairs, or to have at least a quarterly accounting of personal financial transactions undertaken in his or her behalf by the facility during a period of time the patient or resident has delegated those responsibilities to the facility. In addition, a patient or resident is entitled to receive each month from the facility an itemized statement setting forth the services paid for by or on behalf of the patient and the services rendered by the facility. The admission of a patient to a nursing home does not confer on the nursing home or its owner, administrator, employees, or representatives the authority to manage, use, or dispose of a patient's property.

(h) A nursing home patient or a person authorized by the patient in writing may inspect and copy the patient's personal and medical records. The records shall be made available for inspection and copying by the nursing home within a reasonable time, not exceeding 1 week, after the receipt of a written request.

(i) If a nursing home patient desires treatment by a licensed member of the healing arts, the treatment shall be made available unless it is medically contraindicated, and the medical contraindication is justified in the patient's medical record by the attending physician.

(j) A nursing home patient has the right to have his or her parents, if a minor, or his or her spouse, next of kin, or patient's representative, if an adult, stay at the facility 24 hours a day if the patient is considered terminally ill by the physician responsible for the patient's care.

(k) Each nursing home patient shall be provided with meals that meet the recommended dietary allowances for that patient's age and sex and that may be modified according to special dietary needs or ability to chew.

(l) Each nursing home patient has the right to receive representatives of approved organizations as provided in section 21763.

(4) A nursing home, its owner, administrator, employee, or representative shall not discharge, harass, or retaliate or discriminate against a patient because the patient has exercised a right protected under this section.

(5) In the case of a nursing home patient, the rights enumerated in subsection (2)(c), (g), and (k) and subsection (3)(d), (g), and (h) may be exercised by the patient's representative.

(6) A nursing home patient or home for the aged resident is entitled to be fully informed, as evidenced by the patient's or resident's written acknowledgment, before or at the time of admission and during stay, of the policy required by this section. The policy shall provide that if a patient or resident is adjudicated incompetent and not restored to legal capacity, the rights and responsibilities set forth in this section shall be exercised by a person designated by the patient or resident. The health facility or agency shall provide proper forms for the patient or resident to provide for the designation of this person at the time of admission.

(7) This section does not prohibit a health facility or agency from establishing and recognizing additional patients' rights.

(8) As used in this section:

(a) "Patient's representative" means that term as defined in section 21703.

(b) "Title XVIII" means title XVIII of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1395 to 1395b, 1395b-2, 1395b-6 to 1395b-7, 1395c to 1395i, 1395i-2 to 1395i-5, 1395j to 1395t, 1395u to 1395w, 1395w-2 to 1395w-4, 1395w-21 to 1395w-28, 1395x to 1395yy, and 1395bbb to 1395ggg.

(c) "Title XIX" means title XIX of the social security act, chapter 531, 49 Stat. 620, 42 U.S.C. 1396 to 1396f, 1396g-1 to 1396r-6, and 1396r-8 to 1396v.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979 ;—Am. 1982, 354, Imd. Eff. Dec. 21, 1982 ;—Am. 1998, Act 88, Imd. Eff. May 13, 1998 ;—Am. 2001, Act 240, Imd. Eff. Jan. 8, 2002.

333.20202 Responsibilities of patient or resident.

(1) A patient or resident is responsible for following the health facility rules and regulations affecting patient or resident care and conduct.

(2) A patient or resident is responsible for providing a complete and accurate medical history.

(3) A patient or resident is responsible for making it known whether he or she clearly comprehends a contemplated course of action and the things he or she is expected to do.

- (4) A patient or resident is responsible for following the recommendations and advice prescribed in a course of treatment by the physician.
- (5) A patient or resident is responsible for providing information about unexpected complications that arise in an expected course of treatment.
- (6) A patient or resident is responsible for being considerate of the rights of other patients or residents and health facility personnel and property.
- (7) A patient or resident is responsible for providing the health facility with accurate and timely information concerning his or her sources of payment and ability to meet financial obligations.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.20203 Guidelines; immunity; other remedies at law neither expanded nor diminished.

- (1) The rights and responsibilities prescribed in sections 20201 and 20202 are guidelines for health facilities, facility staff, facility employees, patients, and residents. An individual shall not be civilly or criminally liable for failure to comply with those sections.
- (2) sections 20201 and 20202 shall not be construed to expand or diminish other remedies at law available to a patient or resident under this code or the statutory and common law of this state.
- (3) The department shall develop guidelines to assist health facilities and agencies in the implementation of sections 20201 and 20202.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.20211 Summary of activities; availability of list and current inspection reports.

- (1) Every 6 months the department shall issue a summary of its activities in relation to licensing and regulation and shall cause the information to be made available to the news media and all persons who make a written request to receive copies of the information.
- (2) The list and current inspection reports shall be available for inspection and copying.

History: Add. 1978, Act 493, Eff. Mar. 30, 1979

PART 213
HOMES FOR THE AGED

333.21301 Definitions and principles of construction.

Article 1 contains general definitions and principles of construction applicable to all articles in this code and part 201 contains definitions applicable to this part.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.21307 Exemptions.

This part does not authorize the medical supervision, regulation, or control of the remedial care or treatment of residents in a home for the aged operated for the adherents of a bona fide church or religious denomination who rely on treatment by prayer or spiritual means only in accordance with the creed or tenets of that church or denomination. The residents, personnel, or employees, other than food handlers, of the home are not required to submit to a medical or physical examination.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.21311 License required; use of “home for aged” or similar term or abbreviation; minimum age for admission; waiver of age limitation; documentation; determination by director.

- (1) A home for the aged shall be licensed under this article.
- (2) “Home for the aged” or a similar term or abbreviation shall not be used to describe or refer to a health facility or agency unless the health facility or agency is licensed as a home for the aged by the department under this article.
- (3) Except as otherwise provided in this subsection, a home for the aged shall not admit an individual under 60 years of age. Upon the request of a home for the aged and subject to subsection (4), the

director shall waive the age limitation imposed by this subsection if the individual, the individual's guardian or other legal representative, if appointed, and the owner, operator, and governing body of the home for the aged, upon consultation with the individual's physician, agree on each of the following:

- (a) The home for the aged is capable of meeting all of the individual's medical, social, and other needs as determined in the individual's plan of service.
- (b) The individual will be compatible with the other residents of that home for the aged.
- (c) The placement in that home for the aged is in the best interests of the individual.
- (4) The owner, operator, and governing body of the home for the aged shall submit, with its request for a waiver, documentation to the director that supports each of the points of agreement necessary under subsection (3). Within 5 days after receipt of the information required under this subsection, the director shall determine if that documentation collectively substantiates each of the points of agreement necessary under subsection (3) and approve or deny the waiver. If denied, the director shall send a written notice of the denial and the reasons for denial to the requesting party.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1984, Act 311, Eff. Mar. 29, 1985 ;—Am. 2004, Act 74, Imd. Eff. Apr. 21, 2004.

333.21313 Owner, operator, and governing body of home for aged; responsibilities and duties generally.

- (1) The owner, operator, and governing body of a home for the aged are responsible for all phases of the operation of the home and shall assure that the home maintains an organized program to provide room and board, protection, supervision, assistance, and supervised personal care for its residents.
- (2) The owner, operator, and governing body shall assure the availability of emergency medical care required by a resident.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.21321 Bond required.

- (1) Before issuance of a license under this article, the owner, operator, or governing body of the applicant shall give a bond with a surety approved by the department. The bond shall insure the department for the benefit of the residents. The bond shall be conditioned that the applicant do all of the following:
 - (a) Hold separately and in trust all resident funds deposited with the applicant.
 - (b) Administer the funds on behalf of a resident in the manner directed by the depositor.
 - (c) Render a true and complete account to the resident, the depositor, and the department when requested.
 - (d) Account, on termination of the deposit, for all funds received, expended, and held on hand.
- (2) The bond shall be in an amount equal to not less than 1-1/4 times the average balance of resident funds held during the prior year. The department may require an additional bond or permit filing of a bond in a lower amount, if the department determines that a change in the average balance has occurred or may occur. An applicant for a new license shall file a bond in an amount which the department estimates as 1-1/4 times the average amount of funds which the applicant, upon issuance of the license, is likely to hold during the first year of operation.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.21325 Removal of resident from home for the aged; conditions.

If a resident of a home for the aged is receiving care in the facility in addition to the room, board, and supervised personal care specified in section 20106(3), as determined by a physician, the department shall not order the removal of the resident from the home for the aged if both of the following conditions are met:

- (a) The resident, the resident's family, the resident's physician, and the owner, operator, and governing body of the home for the aged consent to the resident's continued stay in the home for the aged.
- (b) The owner, operator, and governing body of the home for the aged commit to assuring that the resident receives the necessary additional services.

History: Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001.

333.21331 Licensee considered consumer of tangible personal property.

A licensee of a home for the aged operated for profit is considered to be the consumer, and not the retailer, of tangible personal property purchased and used or consumed in operation of the home.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.21332 Home for the aged; influenza vaccination.

A home for the aged shall offer each resident, or shall provide each resident with information and assistance in obtaining, an annual vaccination against influenza in accordance with the most recent recommendations of the advisory committee on immunization practices of the federal centers for disease control and prevention, as approved by the department of community health.

History: Add. 2000, Act 437, Imd. Eff. Jan. 9, 2001.

333.21333 Smoking policy.

(1) A home for the aged licensed under this article shall adopt a policy regulating the smoking of tobacco on the home for the aged premises.

(2) A home for the aged policy governing smoking shall at a minimum provide that:

(a) Upon admission each resident or person responsible for the resident's admission shall be asked if there is a preference for placement with smokers or nonsmokers.

(b) Smoking by residents shall be restricted to private rooms, rooms shared with other smokers only, or other designated smoking areas.

(c) Visitors shall not be permitted to smoke in rooms or wards occupied by residents who do not smoke.

(d) Visitors shall be permitted to smoke only in designated areas.

(e) Staff shall be permitted to smoke in designated areas only.

(f) Staff shall not be permitted to smoke in residents' rooms or while performing their duties in the presence of residents.

(g) Eating areas shall have sections for smokers and nonsmokers.

(h) Cigarettes, cigars, and pipe tobacco shall not be sold or dispensed within the licensed facility except as provided for by the owner or governing board.

(i) A sign indicating that smoking is prohibited in the facility except in designated areas shall be posted at each entrance to the facility. Each designated smoking area shall be posted as such by sign.

(3) A home for the aged licensed under this article shall retain a copy of the smoking policy which will be available to the public upon request.

History: 1978, Act 368, Eff. Sept. 30, 1978.

333.21335.added Requirement of emergency generator system in home for the aged.

(1) Except as provided under subsection (2), a home for the aged seeking a license or a renewal of a license under this article shall have, at a minimum, an emergency generator system that during an interruption of the normal electrical supply is capable of both of the following:

(a) Providing not less than 4 hours of service.

(b) Generating enough power to provide lighting at all entrances and exits and to operate equipment to maintain fire detection, alarm, and extinguishing systems, telephone switchboards, heating plant controls, and other critical mechanical equipment essential to the safety and welfare of the residents, personnel, and visitors.

(2) A home for the aged that is licensed under this article on the effective date of the amendatory act that added this section is not required to comply with subsection (1) until that home for the aged undergoes any major building modification. As used in this section, "major building modification" means an alteration of walls that creates a new architectural configuration or revision to the mechanical or electrical systems that significantly revises the design of the system or systems. Major building modification does not include normal building maintenance, repair, or replacement with equivalent components or a change in room function.

(3) A home for the aged that is exempt from compliance under subsection (2) shall notify the local medical control authority and the local law enforcement agency that it does not have an emergency generator on site. Until a home for the aged undergoes any major building modification as provided under

subsection (2), a home for the aged that is exempt from compliance under subsection (2) shall file with the department a copy of the home for the aged's written policies and procedures and existing plans or agreements for emergency situations, including in the event of an interruption of the normal electrical supply.

(4) A home for the aged that fails to comply with this section is subject to a civil penalty of not more than \$2,000.00 for each violation. Each day a violation continues is a separate offense and shall be assessed a civil penalty of not less than \$500.00 for each day during which the failure continues.

History: Add. 2004, Act 397, Eff. Apr. 15, 2005

PART 217 NURSING HOMES

333.21711 License required; prohibited terms or abbreviations; license for formal or informal nursing care services; exception.

(1) A nursing home shall be licensed under this article.

(2) "Nursing home", "nursing center", "convalescent center", "extended care facility", or a similar term or abbreviation shall not be used to describe or refer to a health facility or agency unless the health facility or agency is licensed as a nursing home by the department under this article.

(3) A person shall not purport to provide formal or informal nursing care services of the kind normally provided in a nursing home without obtaining a license as provided in this article. This subsection does not apply to a hospital or a facility created by Act No. 152 of the Public Acts of 1885, as amended, being sections 36.1 to 36.12 of the Michigan Compiled Laws.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979.

333.21715 Programs of planned and continuing nursing and medical care required nurses and physicians in charge; expiration of subsection (1)(a); nature and scope of services.

(1) A nursing home shall provide:

(a) A program of planned and continuing nursing care under the charge of a registered nurse in a skilled facility and a licensed practical nurse with a registered nurse consultant in an intermediate care facility. This subdivision shall expire December 31, 1979.

(b) A program of planned and continuing medical care under the charge of physicians.

(2) Nursing care and medical care shall consist of services given to individuals who are subject to prolonged suffering from illness or injury or who are recovering from illness or injury. The services shall be within the ability of the home to provide and shall include the functions of medical care such as diagnosis and treatment of an illness; nursing care via assessment, planning, and implementation; evaluation of a patient's health care needs; and the carrying out of required treatment prescribed by a physician.

History: 1978, Act 368, Eff. Sept. 30, 1978 ;—Am. 1978, Act 493, Eff. Mar. 30, 1979.



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